

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JEFFREY HERSON, et al.,

Plaintiff(s),

v.

CITY OF RICHMOND,

Defendant(s).

No. C 09-02516 PJH

ORDER RE ADMINISTRATIVE MOTIONS

Before the court are two motions for administrative relief, one filed by each side. Defendant's motion has been opposed. Defendant's motion for leave to submit two declarations in response to the declaration filed by plaintiff with his reply brief is GRANTED, as is plaintiff's request to further supplement his reply declaration in order to clarify factual matters contained therein. No further declarations may be filed in connection with the motion for preliminary injunction.

In their motion for administrative relief, plaintiffs seek leave to present oral testimony at the August 4, 2009 hearing on their motion for preliminary injunction. Pursuant to Civil Local Rule 7-11, defendant's opposition is due August 3, 2009, and the matter will be deemed submitted on August 4, 2009. Accordingly, the motion is arguably untimely as the hearing will take place before the motion is at issue, should defendant not file an opposition brief today or tomorrow. Additionally, plaintiffs do not identify the witnesses they seek to have the court order to appear or the contested facts about which the witnesses will testify. The court assumes that the witnesses are plaintiff Jeffrey Herson and defense declarants Richard Mitchell and Ruby Benjamin. However, the materiality of their testimony is not readily apparent to the court, given that there appears to be no dispute that plaintiffs' last

1 attempt to obtain permits preceded the July 7, 2009 repeal of the challenged ordinance and
2 that the challenged ordinance was in effect on the day the permit applications were
3 proffered. Plaintiffs explain why they believe they are entitled to present oral testimony, but
4 they do not explain why oral testimony is necessary. Moreover, the court is concerned
5 about the short notice that would be afforded to the witnesses should they be ordered to
6 appear the day before or morning of a formal hearing. The request to present oral
7 testimony and for a court order directing certain unidentified witnesses to appear is
8 DENIED. However, if it becomes apparent that an evidentiary proceeding is required for a
9 fair determination of the motion, one will be scheduled for a later date.

10 **IT IS SO ORDERED.**

11 Dated: August 3, 2009



12 PHYLLIS J. HAMILTON
13 United States District Judge
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